IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO.54 OF 2000

The Commissioner of Central
Excise, Pune I .. Applicant.

V/s.

M/s.Nutech Engg. Co.Pvt.Ltd. .. Respondent.

Mr.P.S. Jetly for the applicant.

None for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 7TH JUNE, 2006.

P.C. :

Heard learned counsel for the rival parties.

2. The application under consideration was admitted by this Court on the following substantial question of law:

1. Whether it is permissible to avail Modvat Credit on cranes treating them to be capital.

2. Whether the stand taken by the Tribunal amounts to expanding the scope of the expressly restricted provisions in Rule 57Q during the relevant period.

3. Whether the order of the Tribunal is correct in extending the scope of the capital goods under the provision of Rule 57Q of Central Excise Rules, 1944.

3. Heard Mr.Jetly, learned counsel for the Revenue.

None for the respondent in spite of service.

4. The impugned order passed by the Tribunal reads as under :

> "The amount involved is around Rs.13000/-. The question involved is the eligibility of cranes to be considered as capital goods within the meaning of Rule 57Q. The issue is not repetitive for the reason that by amendment made in 1995, cranes have specifically been included in the definition of capital goods as the Commissioner (Appeals) finds".

5. The learned counsel for the Revenue contends that the Tribunal did not have power to refuse to decide the question raised considering the financial revenue implications. He submits that the question ought to have been decide by the Tribunal on merits. He further submits that the cranes could not have been considered as capital goods within the meaning of Rule 57Q prior to the amendment made in the year 1995.

6. Having heard Mr.Jetly without going to the merits of the questions raised, we deem fit to answer all the above questions in favour of the applicants and against the Revenue in view of the law laid down by us in the case of Commissioner of Central Excise V/s. Indian Seamless Steels and Alloys Limited [2005 (190) E.L.T. 12 (Bom.) wherein the user test was applied by this Court. Applying the very same test cranes have

been considered as capital goods within the meaning of Rule 57Q.

7. In the above view of the matter, the application is without any merit. The same is dismissed with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)